

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2007-000633

09/30/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

JEWEL INVESTMENT COMPANY L P, et al.

DONALD P ROELKE

v.

MARICOPA COUNTY

RACHELLE ZOLLER LEIBSOHN

**UNDER ADVISEMENT RULING**

(Maricopa County's Motion To Dismiss The 2008 Tax Year Claim)

Plaintiff is the present owner of parcel 503-80-006N, having purchased it on September 24, 2007 from its previous owner, Deer Valley and 235 LLC. During the period of its ownership, Deer Valley received an assessment for tax year 2007, which it did not contest, and for tax year 2008, against which it filed an appeal with the State Board of Equalization. The Board hearing was conducted on October 2, 2007 (i.e., after Plaintiff had purchased it), and the Board mailed its decision the following day. Plaintiff's Amended Complaint seeks relief for both tax years 2007 and 2008. The County, while not challenging the permissibility of the 2007 appeal, has filed a motion to dismiss the 2008 action on the ground of untimeliness. Plaintiff contends that, although the action would have been untimely if filed by Deer Valley, its own action is timely because its time limit is not defined by Deer Valley's appeal.

Plaintiff combines the language of two other statutes, A.R.S. § 42-16201(A), which states that "the taxpayer" may contest the assessor's valuation, and A.R.S. § 42-16168(A) (repeated at A.R.S. § 42-16203(A)), which states that "any party" may appeal an adverse decision of the State Board of Equalization. Plaintiff concludes that it is a "taxpayer" entitled to appeal under Section 11005(A) but, citing law dictionary definitions and case law in other contexts, not a "party" subject to the time limit for appeal under Section 16201(A).

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Plaintiff's strict definition of the word "party" overlooks another related statute, A.R.S. § 42-16205(B), which states, "A new owner of property that was valued by the assessor and whose valuation was not appealed by the former owner of the property may appeal the valuation to court on or before December 15 of the year in which the taxes are levied." The plain language of this section limits the new owner's appeal right to those cases in which the former owner did not exercise its right to appeal. The Court must construe related statutes together and avoid an interpretation that renders a statutory provision meaningless, unnecessary, or duplicative. *Arizona Dept. of Revenue v. Action Marine, Inc.*, 218 Ariz. 141, 143 ¶ 10 (2008). If Section 16201(A) permits a new owner to appeal irrespective of whether the former owner has appealed, Section 16205(B) is rendered unnecessary and meaningless. It follows that the Court cannot accept a definition of "party" which inevitably leads to such a proscribed interpretation. The Court points out that, under the facts here (though this is not essential to the decision), Plaintiff could have moved to substitute itself as the party appellant before the Board pursuant to Rule 25(d) or to intervene pursuant to Rule 24(a); the reason that it did not is immaterial. Any due process requirement is satisfied by the original owner's appeal to the Board. *Seafirst Corp. v. Arizona Dept. of Revenue*, 172 Ariz. 54, 57 (Tax 1992).

The Court finds *FDIC v. Maricopa County*, 175 Ariz. 128 (Tax 1993), to be on point. Just as in the present case, there were two property owners in *FDIC*, the original owner and the successor in interest, each of whom filed an appeal. The Court held that only one appeal to the acts of the assessor on the same property for the same tax year is permitted under the statutory scheme. *Id.* at 130. Although there have been changes in the property tax laws since *FDIC* was decided, none of those changes affect the Tax Court's conclusion in that case, that a single appeal must decide all disputes.

The Amended Complaint does not flesh out the claim of illegality leveled against the 2008 assessment or make clear whether it is based on a ground independent of valuation or classification, as required by A.R.S. § 42-11005(D). At a minimum, it appears to be premature, as there is no allegation in the Amended Complaint that the 2008 tax was paid, hence there is no illegally collected tax to be recovered.

Therefore, IT IS ORDERED granting Defendant's Motion To Dismiss The 2008 Tax Year Only and dismissing the matter as to that tax year only.